

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ELIZABETH HAMILTON

Claimant

VS.

TYSON FRESH MEATS, INC.

Self-Insured Respondent

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Docket No. 1,025,738

ORDER

Claimant appealed the January 10, 2006, Order Denying Medical Treatment entered by Administrative Law Judge Pamela J. Fuller.

ISSUES

Claimant requests medical treatment for bilateral upper extremity injuries that she allegedly sustained working for respondent. In the January 10, 2006, Order, Judge Fuller denied claimant's request. Without making any findings, the Judge concluded:

Claimant's request for medical treatment to bilateral upper extremities is hereby denied.

Claimant did not file a brief with the Board. But in her application for Board review, claimant stated the issue was whether claimant's alleged injuries arose out of and in the course of her employment with respondent.

Conversely, respondent argued in its brief filed with the Board that the Judge denied claimant's request for medical treatment for reasons that are not subject to review from a preliminary hearing order. Respondent wrote in pertinent part:

In ruling on the issue presented in this preliminary hearing, Judge Fuller made no findings on any disputed issue as to notice, timely written claim, accidental injury, or injury arising out of and in the course of employment.

Rather, as is revealed by review of the transcript, Judge Fuller considered the evidence that Claimant had a previous claim for a 2002 injury to her bilateral upper extremities which was settled in August, 2005; that Claimant had received exhaustive evaluation and treatment from a number of physicians for her prior claim each of whom found the Claimant to be at MMI; that two nerve conduction studies

had been completed in December, 2003 and November, 2004 with normal findings; and that Claimant's physician, Dr. Melhorn, did not recommend any medical treatment but rather recommended heat in the morning in the form of a warm shower, heating pad, or thermal cream and cool in the evening in the form of a cool water soak, ice, or a cool gel.

Respondent respectfully contends that there is no finding on a jurisdictional issue which is subject to review by the Board, that the application for review mistakes the issue decided at preliminary hearing, and that the application for review should be denied.¹

In short, the parties are unable to agree upon the issue or issues presented by this appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as compiled to date, the Board finds and concludes this claim should be remanded to the Judge for specific findings of fact.

The Board's jurisdiction to review preliminary hearing findings and orders is limited. The Board is unable to discern from either the record or the January 10, 2006, Order Denying Medical Treatment whether the Board has jurisdiction at this juncture of the claim. For example, the Board has jurisdiction to review those preliminary hearing findings specifically set forth in K.S.A. 44-534a(a)(2) and any preliminary order in which the Judge exceeds his or her authority. The Board, however, does not have jurisdiction to review a preliminary hearing finding that a worker does not presently need medical treatment.

The Board does not retain jurisdiction over this appeal.

WHEREFORE, the Board remands this claim to the Judge for specific findings.

IT IS SO ORDERED.

Dated this ____ day of March, 2006.

BOARD MEMBER

¹ Respondent's Brief at 2 (filed Feb. 13, 2006).

c: Scott J. Mann, Attorney for Claimant
Wendel W. Wurst, Attorney for Respondent
Pamela J. Fuller, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director